MONROE D. KIAR

TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

TOWN ATTORNEY REPORT

DATE: May 27, 2004

FROM: Monroe D. Kiar

RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations**: On August 27, 2003 and August 28, 2003, Mr. Stanley Cohen met individually with each Councilmember as well as Town Staff and the Town Attorney relevant to exploring the feasibility of the Town acquiring the Sunrise Water System and the Ferncrest Facility. The Town Attorney recently spoke with Ken Cohen during which Mr. Cohen advised the Town Attorney that the Town Staff had finalized its report regarding the acquisition of the Western Area Utilities as well as Ferncrest Utilities in the east and that Staff had distributed its report to the Councilmembers. Mr. Cohen indicated at that time that his Staff would be meeting with the Council seeking its direction in the near future as to what action the Town Council wishes to take on this matter. On May 26, 2004 the Town Attorney spoke with Mr. Dan Colabella in Mr. Cohen's absence, and Mr. Colabella indicated that to his knowledge, there had been no new changes in this matter since the Litigation Update Report.

2. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A Final Order and Judgment Granting Petition for Common Law Certiorari was entered by Judge Patricia Cocalis in these two consolidated cases. Pursuant to the direction given to Mr. Burke by the Davie Town Council, an appeal of the Order entered by Judge Cocalis was filed with the 4th District Court of Appeal, but the 4th District Court of Appeal denied the Town's Petition for Writ of Certiorari on the Merits and Without Opinion, ordered that the matter be remanded back to the Town Council and required it to vote on the application based on the record as it existed prior to the filing of the Writ of Certiorari and in accordance with the Final Judgment entered by Judge Cocalis. The Petitioner requested the matter again be placed on the Town Council Agenda and the matter was again heard on October 2, 2002, by the Town Council. After a presentation by Mr. Burke, the applicant and Staff evidence was presented by those in attendance who spoke in favor and in opposition to the two Petitions, the Town Council voted 4 to 1 to deny each petition. A Petition for Supplemental Relief to Enforce Mandate or in the Alternative, Supplemental Complaint for Writ of Mandamus and for Writ of Certiorari was

thereafter filed by the Plaintiff, Griffin-Orange North, Inc. and Seventy-Five East, Inc. with regard to the Quasi Judicial Hearing held before the Town of Davie on October 2, 2002. The Plaintiffs have filed these pleadings requesting that the Court order the Town of Davie to grant them the B3 Zoning and they are seeking a recovery of their attorney's fees and court costs for their preparation of the filing of this new Petition for Supplemental Relief to Enforce the Court's Mandate. Essentially, the pleadings request that the Circuit Court quash the Town Council's second denial of the Plaintiffs' Zoning Application and request that the Court compel approval of the B3 Zoning designation. The Plaintiffs filed their pleadings with the same Court (Judge Cocalis) which previously entered a Final Judgment in favor of Plaintiffs, and also filed an identical original action to cover all of their procedural basis. Subsequent thereto, the Plaintiff filed a Motion to Consolidate the Petition for Supplemental Relief to Enforce Mandate as well as the second lawsuit it initiated and requested that both lawsuits be heard before the original judge in this case, Judge Cocalis, who is no longer in the Civil Division, rather than Judge Robert Carney, who has taken over Judge Cocalis' prior case load. The hearing on the Petitioner's Motion to Consolidate a new Petition for Writ of Certiorari with its previously filed action was heard on December 17, 2002. Judge Carney the property owner's Motion to Consolidate, but denied the property owner's second Motion, which was to transfer both actions back to Circuit Court Judge Patricia Cocalis. On January 30, 2003, there was an initial hearing and oral argument was presented by both sides before Judge Robert Carney relevant to the property owner's Motion to prohibit the Town of Davie Administrator from proceeding with Administrative re-zoning of the property. At the January 30, 2003 hearing, Judge Carney stated he wanted to hear more argument on this matter and scheduled another hearing for February 14, 2003. On February 14, 2003, the Judge denied the Writ of Prohibition and Motion to Stay and as indicated, in his view, the Court did not have jurisdiction to prevent the Town of Davie from carrying out its municipal function of re-zoning property. Accordingly, as confirmed by Mr. Burke, there are no legal impediments to the Town moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. However, at the Town Council Meeting of May 7, 2003, the Town of Davie and the property owner entered into an agreement which was filed with the Court and approved by the Town Council which would temporarily abate all litigation activities in the pending lawsuit as well as abate the moving forward with the Town Administrator's application to re-zone the two parcels to B2 and SC. This agreement was entered into to enable the County to obtain an appraisal and to continue its negotiations in an effort to possibly purchase the subject properties as a public park. At the July 2, 2003 Town Council Meeting, Councilmember Paul advised the Town Council that the County had completed its appraisal and the County and property owner had reached agreement as to the purchase price. The Council had previously been advised that this matter was to be heard and considered by the County Commission at its meeting in August, 2003 and accordingly, an Agreed Motion to Extend the Abatement of this litigation was prepared by Mr. Spencer, the attorney for the property owner, and reviewed by the Town Attorney's Office and subsequently approved by the Town Council at its July 8, 2003 Meeting. The Agreed Motion has been filed with the Court and the litigation continues to be abated pending final disposition by the County. As indicated in previous Litigation Updates, at the Town Council Meeting of September 17, 2003, the Town Council was advised that the County Commission had voted 7-2 to approve the purchase of the two parcels which are the subject matter of this litigation. As a consequence, the parties agreed that the litigation

would be abated until such time as the closing and the purchase of property had been consummated at which time, Mr. Burke would request that the property owner dismiss the lawsuits as to the issues surrounding the litigation, namely whether or not the property owner has a right to re-zone the two parcels to B3 zoning as this case would be a moot issue. The Town Administration thereafter, was able to confirm that the purchase had been concluded and accordingly, on January 14, 2004, the Town Attorney so advised Mr. Burke, our special counsel, that the purchase had been concluded. The Town Attorney spoke again with Mr. Burke on April 27, 2004, and was again advised that although Mr. Burke had attempted several times to contact Mr. William Spencer, the attorney for the Plaintiff, to request that Mr. Spencer dismiss both lawsuits forthwith, as of April 27, 2004, his office had received no response. Mr. Burke indicated therefore, that his office had filed a Motion with the Court seeking an Order of Dismissal so that this matter can be concluded once and for all and both his office and the Town Attorney's office can close their files on these cases. On May 26, 2004, the Town Attorney spoke with Mr. Burke's legal assistant, who advised the Town Attorney that to date, Mr. Burke's office had not received an Order from the Court dismissing these lawsuits. In a subsequent telephone call from Mr. Burke, he indicated his Motion was being reset for hearing by his office in the near future.

3. **Town of Davie v. Malka:** As the Town Council has been previously advised, the Town Attorney's Office has kept close contact with the Building Department relevant to the progress of this particular property. The Building Department is continuing to keep a close eye on this particular property owner to ensure that the property owner is moving ahead with final completion of all additions of the structure as promised. As indicated in prior Town Attorney Litigation Update Reports, the Town Attorney has maintained close contact with Mr. Bill Hitchcock, the Building Official, who has repeatedly confirmed that the property owner is moving ahead with completion of all additions to the structure as promised. Additionally, the Town Attorney has maintained close contact with Mr. Stallone and Mr. Stallone indicates that there appear to be no complaints regarding the structure and from a recent visit, he has confirmed that the Malkas are moving ahead with the completion of the additions to the structure. Mr. Stallone indicates that he has received a recent complaint regarding the Malkas, but the complaint was unrelated to the completion of the additions of the structure. On May 12, 2004, the Town Attorney again spoke with Mr. Ernie Criscitello who confirmed that his office had received additional complaints regarding the Malkas and that they have been cited for violations of the Town Code, but these new complaints are not related to the completion of the additions to the structure. The Malkas were charged with violations of 12-32 (g), 12-32, and 12-33 (u), according to Mr. Criscitello. On May 26, 2004, the Town Attorney spoke with Mr. Stallone who indicated that the status in this matter had not changed since the last Litigation Update Report.

4. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** As indicated in prior Litigation Reports, on May 24, 2002, Judge Fleet issued a 19 page Order on the Motion for Temporary Injunction in which he concluded that the Amendments regarding the Citrus Canker litigation enacted by the Florida Legislature as codified in Florida Statutes Section 581.184, was an invalid invasion of the constitutional safeguard contained in

both the United States Constitution and the Constitution of the State of Florida. The Judge ultimately entered a statewide Stay Order enjoining the Department of Agriculture from entering upon private property in the absence of a valid search warrant issued by an authorized judicial officer and executed by one authorized by law to do so. The Florida Department of Agriculture and Consumer Services filed its Notice of Appeal seeking review by the 4th District Court of Appeal. The Department of Agriculture also filed a Motion with the 4th District Court of Appeal seeking that the appellate procedures be expedited, and a motion in which there was a suggestion for "bypass" certification to the Supreme Court of Florida. The Department of Agriculture contended that in light of the gravity and emergency nature of the issues, the matter should be certified by the 4th District Court of Appeal directly to the Supreme Court for its adjudication since the Department of Agriculture anticipated that regardless as to how the 4th District Court of Appeal rules on the matter, it would in fact be appealed by either the Department of Agriculture or by the County and coalition of cities to the Supreme Court of Florida for final adjudication. The 4th District Court of Appeal in fact for only the fourth time in its history, did certify this matter directly to the Florida Supreme Court for adjudication. The Florida Supreme Court however, refused to hear this matter at this stage and remanded it back to the 4th District Court of Appeal for further proceeding. Both the Florida Department of Agriculture and Consumer Services and the County and coalition of cities have filed their respective Appellate Briefs. The Florida Department of Agriculture filed a Reply Brief to the Brief filed by Broward County and the coalition of cities. The Town Attorney along with several other municipal attorneys, at the request of the Chief Appellate Attorney for Broward County, Andrew Meyers, attended the oral argument in these proceedings before a three judge panel at the 4th District Court of Appeal Courthouse in Palm Beach County, on December 4, 2002. On January 15, 2003, the 4th District Court of Appeal issued its opinion relevant to the appeal filed by the Florida Department of Agriculture and Consumer Services challenging the Order of Judge Fleet. The 4th District Court of Appeal found that Section 581.184 of the Florida Statutes (2002) requiring removal of Citrus trees within the 1900 feet of a tree infected with canker did not violate due process and therefore, was constitutional. The 4th District Court of Appeal also found Section 933.07(2) of the Florida Statutes allowing area wide search warrants unconstitutional and a violation of the 4th Amendment. The Court however, did rule that multiple properties to be searched may be included in a single search warrant and the issuance of such a warrant should be left to the discretion of the issuing magistrate. The 4th District Court of Appeal entered an Order quashing Judge Fleet's Order and in response, the County and coalition of cities, including the Town of Davie, filed a Notice to Invoke Discretionary Jurisdiction of the Supreme Court and to review the decision of the 4th District Court of Appeal. The Notice to Invoke Discretionary Jurisdiction also requested the re-imposition of a temporary stay. The Supreme Court entered an Order agreeing to review this matter, but refused to re-impose the automatic stay prohibiting the removal of healthy, but exposed Citrus trees during the pendency of this litigation. The Florida Department of Agriculture has resumed cutting healthy, but exposed trees in Central and North Palm Beach as well as in the cities of Cape Coral and Orlando. As indicated in the last several Town Attorney's Reports, the County continues to aggressively oppose the issuance of warrant applications in Broward County regarding the cutting of healthy, but exposed Citrus trees. On July 7, 2003, a hearing was held before Judge Fleet on the coalition of cities and County's Motion for Reinstatement of a Temporary Injunction with

regard to the eradication of healthy, but exposed trees within 1900 feet of an infected tree. The Judge heard extensive oral argument on both sides and afterwards, ordered the Department of Agriculture and Consumer Services to comply with a prior Order concerning the method in which the Department is to measure the 1900 foot zone surrounding a Citrus tree within which exposed Citrus trees must be destroyed. The Court issued a written Order granting a Temporary Injunction (the "Temporary Injunction Order"). The Temporary Injunction Order prohibits the Department from using a method of measurement that substantially departs from the 1900 foot tree to tree measurement expressly required by Section 581.184(4)©), Fla. Stat. (2002). The Temporary Injunction Order also prohibits a material violation of the 1900 foot destruction radius mandated by Section 581.184(1)(b) and Section 581.184(2)(a). The Temporary Injunction prohibits the Department from cutting down trees on the basis of past samples that were the product of flawed chain of custody and diagnosis procedures which procedures the Department itself has since abandoned. Under the Court's ruling now in effect, the Department of Agriculture must measure precisely from the infected tree to the drip line of any uninfected, but exposed tree within the 1900 foot zone rather than using satellite technology to set the 1900 foot radius. The Order granting the Temporary Injunction has been appealed by the Florida Department of Agriculture to the 4th District Court of Appeal and that Appeal is pending. As previously indicated, the Florida Department of Agriculture sought a review of the Trial Court's Order of July 18, 2003, which directs the Department to utilize specific management and diagnostic methodologies in proceedings with the Citrus Canker program. That appeal pertained to the most recent Injunction Order entered by Judge Fleet in the Citrus Canker litigation which has now been ongoing for 3 years. Oral argument with regard to the 4th District Court of Appeal matter was not scheduled by the Court. On October 7, 2003, however, oral argument before the Supreme Court in the original "Fleet" case was heard. On February 12, 2004, the Supreme Court ruled on this matter and held that Florida Statutes Section 581.184, the Citrus Canker Statute permitting the destruction of exposed, but uninfected trees within 1900 feet of an infected tree was constitutional. Within the time permitted by law, the County along with the coalition of cities, filed a Motion for Rehearing of the Court's February 12, 2004 decision setting forth the points of law the Petitioners believed the Court overlooked in its determination. The Town Attorney has since been advised by the Office of the Chief Appellate Attorney for Broward County that the Supreme Court has denied the coalition of cities' Motion for Rehearing. The Chief Appellate Attorney for Broward County has had conversations with the Department of Agriculture's counsel about neither side moving to recover costs from the other side and it is his opinion that although he believes the trial court will require each side to bear its own costs, nevertheless, he feels it would be better to resolve this issue voluntarily. He indicates that the Department is willing to not seek its costs if the coalition agrees not to seek any more injunctive relief against the program. He has asked that each city attorney determine from their client if the city or town would agree to dismiss the lawsuit with each side to bear its own costs and with the Town agreeing not to seek further injunctive relief against the program. In light of the Supreme Court's ruling and its denial of our Motion for Rehearing as well as the Department's willingness not to seek recovery of its costs if no further injunctive relief is sought, the Chief Appellate Attorney believes that it is now appropriate to consider dismissing the case. Pursuant to Chief Appellate Attorney Andrew Meyers' request, the Town Attorney requested direction from the Town Council and

determined that it was their direction that the Town Attorney advise Mr. Meyers that it was agreeable with his decision not to seek further injunctive relief against the Citrus Canker Eradication Program. Mr. Meyers has been so advised by the Town Attorney. On May 26, 2004, the Town Attorney spoke with Mr. Meyers who indicated that a draft Stipulation had been prepared and forwarded to the attorneys for the Florida Department of Agriculture. The Stipulation provides for the dismissal of the lawsuit with each side bearing their own costs. Mr. Meyers indicated that as soon as the final language has been agreed to by his office and the attorneys for the Department of Agriculture, he will send a copy to the Town Attorney's Office and the other municipal attorneys for their review and input.

5. **Christina MacKenzie Maranon v. Town of Davie**: The Town of Davie filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. In response, the Plaintiffs filed an Amended Complaint naming the Town of Davie only as a defendant. Officer Taylor was no longer named a party to these proceedings. The Town thereafter, filed a Motion to Dismiss the Amended Complaint, but after hearing the Motion to Dismiss, it was denied and the Plaintiff was given leave to file a new Amended Complaint in these proceedings. As previously reported, the Plaintiff filed an Amended Complaint and our special legal counsel, Mr. McDuff, prepared and filed an appropriate answer with the Court. On May 12, 2004, the Town Attorney spoke with Mr. McDuff who advised the Town Attorney that the Plaintiff has now filed a Notice requesting the Court to set this matter for trial. On May 26, 2004, the Town Attorney spoke with Mr. McDuff who indicated that to date, no trial date has been set. Mr. McDuff will so advise the Town Attorney once a trial date is scheduled by the Court. In the meantime, Mr. McDuff remains confident that ultimately, this matter will be dismissed on its merits.

6. **Spur Road Property**: As indicated by Mr. Willi to the Town Council at its meeting of January 2, 2003, Mr. Burke advised Mr. Willi that the 4th District Court of Appeal had affirmed the decision of the Florida Department of Transportation to accept the bid of Kevin Carmichael, Trustee, for the sale and purchase of the property which forms the subject matter of the State Road 84 Spur property litigation. At the Town Council Meeting of February 5, 2003, Mr. Willi requested that the Town Council grant him authority to take whatever legal action was necessary to obtain the property in question. That authority was given to him by the Town Council. At the Town Council Meeting of November 5, 2003, the Town Council authorized Mr. Willi to retain the law firm of Becker & Poliakoff to institute an eminent domain proceeding relevant to this property. A Special Executive Session with the attorneys for Becker & Poliakoff and the Town Council was conducted on December 17, 2003. Recently, the Town Attorney spoke with Mr. Daniel Rosenbaum, our special legal counsel, who indicated that the attorneys in his office were finalizing with the retained professionals, the issues that have been addressed. On February 26, 2004, the Town Attorney spoke with Mr. Rosenbaum's colleague, who advised the Town Attorney that the survey the appraiser will rely upon for determining value that the Town needs to make for a determination of its good faith offer to the potential condemnee, if the Town decides to exercise its power of eminent domain, did not properly reflect all of the encumbrances upon the subject site. Therefore, all of the documents pertaining to encumbrances, reservations, easements, etc., upon the site

given to the attorneys by Attorneys' Title Insurance Company were being forwarded to the surveyor to make sure the documents are properly reflected in the survey so the appraiser can properly appraise the property. On April 15, 2004, the Town Attorney spoke with our special legal counsel, Mr. Daniel Rosenbaum. As partially indicated above, Mr. Rosenbaum stated that there are two outstanding issues which are currently with the outside vendors that need to be resolved before definitive action by the Town Council can be taken. One issue involves the need for additional information on a survey commenced by the Town, which has so far necessitated a several week delay, but which Mr. Rosenbaum believes should be completed in the near future. The surveyors indicated that they needed additional documentation and this was forwarded by his office. The other issue involved a meeting which was scheduled by Mr. Rosenbaum and his staff with the Town's Land Planner to conclude the available uses at the subject site. Mr. Rosenbaum indicated that after these two issues have been dealt with, he anticipated that his firm would be proceeding in such a manner as to move this matter forward aggressively. On April 28, 2004, the Town Attorney spoke with Jeff Rembaum, Mr. Rosenbaum's colleague. Mr. Rembaum indicated that his office was still waiting on the Town's outside land use expert to opine as to the available use of the site. Additionally, they were awaiting a revised survey that the appraiser could rely upon for determining value. On May 13, 2004, the Town Attorney spoke with Mr. Rosenbaum who indicated that his office had made significant progress on the technical issues since the last Litigation Update and that all experts were on track with regard to the proposed time table for initiating the legal action which is now approximately 60 days away. On May 26, 2004, the Town Attorney spoke with a representative from Mr. Rosenbaum's office who indicated that according to her belief, the status of this matter remains the same as indicated in the prior Litigation Update Report. This was reconfirmed by Mr. Rosenbaum in a telephone conversation with the Town Attorney on May 27, 2004.

7. **DePaola v. Town of Davie:** Plaintiff DePaola filed a lawsuit against the Town of Davie and the Town filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein who requested that both sides file Memoranda of Law in support of their positions and she took the case under advisement. Both sides did file their Memoranda of Law in support of their positions on the Town's Motion to Dismiss, and on November 13, 2002, the Court entered an Order granting the Town's Motion to Dismiss and entered an Order of Dismissal. The Court found that Mr. DePaola had administrative remedies as a career service employee, either by pursuing a civil service appeal or by a grievance procedure established under a collective bargaining agreement, but he had failed to pursue his administrative remedies. A copy the Court's Order of November 13, 2002, has been previously provided to the Town Council for its review. The Plaintiff DePaola filed a motion with the Court for re-hearing of the Town's Motion to Dismiss, which motion was denied by the Trial Court. The attorneys for DePaola filed a Notice of Appeal of the Trial Court's decision to the 4th District Court of Appeal where the matter is now pending, but failed to file their Appellate Brief within the time set by the Rules of Appellate Procedure. As indicated in prior Town Attorney Litigation Update Reports, the Town's Motion to Dismiss was filed with the 4th District Court of Appeal due to the Plaintiff's failure to file in a timely manner, its Appellate Brief, but the Motion was denied and the 4th District Court of Appeal extended the time in which the Plaintiff could file his Brief. The Plaintiff thereafter, did file his Brief and Mr. Burke's office in turn, prepared and

filed its Answer Brief on December 9, 2003. Thereafter, the Appellant, Mr. DePaola, filed his Reply Brief with the 4th District Court of Appeal of Florida, and a copy has been furnished to the Town Administrator, Mayor and Councilmembers for their information. Oral argument was conducted and presented to the 4th District Court of Appeal by both sides on February 10, 2004. On April 28, 2004, the Town Attorney received a copy of the 4th District Court of Appeal's decision from Michael T. Burke, special legal counsel. The 4th District Court of Appeal reversed the lower court's Final Judgment dismissing Mr. DePaola's Complaint with Prejudice finding that his Complaint stated a cause of action and remanded the case to the trial court for proceedings consistent with the Court of Appeal's opinion. On May 26, 2004, the Town Attorney spoke with Mr. Burke's legal assistant who indicated that Mr. Burke's office would be filing an answer and would be ultimately scheduling the Plaintiff for deposition and would be conducting discovery in the near future. On May 27, 2004, Mr. Burke telephoned the Town Attorney to tell him that the Court will be permitting the Plaintiff to file an Amended Complaint.

8. **City of Cooper City v. Town of Davie:** The City of Cooper City has filed a lawsuit for Declaratory Judgment and Injunctive Relief and Alternative Petitions for Writ of Quo Warranto and Certiorari alleging that a recent ordinance and a recent resolution relevant to annexation are invalid. The Town Attorney's Office prepared an appropriate Motion to Dismiss and filed same as the Town's insurance carrier has refused to provide a legal defense to this action. As the Town Council has previously been advised, this office filed its Motion to Dismiss citing Cooper City's failure to comply with pertinent provisions of the Florida Statutes. Included within those enumerated provisions cited by the Town Attorney's Office, was Cooper City's failure to adhere to the "Intergovernmental Conflict Dispute Resolution" provisions of the Florida Statutes set forth in Chapter 164. Oral argument on the Town's Motion to Dismiss was heard on March 26, 2003 at which time the Judge indicated that this was the first time a matter such as this has come before him in 19 years on the bench and accordingly, he advised both sides that he would take this matter under advisement and get back to the attorneys shortly with his decision. The Judge thereafter, ordered that Cooper City's lawsuit was to be abated until Cooper City had initiated and exhausted the provisions set forth in Chapter 164. The Town and Cooper City engaged in the conflict resolution proceedings and attempted to resolve the matter without resorting to further legal remedies. As indicated in previous Litigation Reports, the Town Attorney's Office is confident in an ultimate successful outcome of this litigation and it is the Town Attorney's position that the Judge's abatement of Cooper City's lawsuit is further proof of the Town's contention that Cooper City had prematurely and inaccurately filed the present lawsuit. The initial meeting required under the "Intergovernmental Conflict Resolution" provisions of Florida Statutes Chapter 164 was held on April 17, 2003. The meeting was attended by the Town Administrator, Mr. Willi, the City Manager of Cooper City, Mr. Farrell, along with their attorneys. The meeting had been advertised and was open to the public. As a resolution to the conflict was not reached, accordingly, pursuant to Section 164.1055, a joint meeting of the municipalities was held in order to resolve the conflict. The Town Council met in good faith, with the Cooper City Commission on September 30, 2003. Thereafter, representatives from the City of Cooper City and from the Town of Davie attended a mediation on November 13, 2003, at 1:00 P.M. before Mediator Arthur Parkhurst. A resolution of the parties' differences

was not reached at mediation and accordingly, the Intergovernmental Conflict procedures failed to resolve this matter. As the Intergovernmental Conflict Resolution procedures were concluded, the Town Attorney's Office again set down its Motion to dismiss the lawsuit and for an award of attorney's fees and oral argument consisting of more than an hour was conducted on February 18, 2004, before the Court. The Town Attorney's Office was pleased with the oral argument presented by his office and is confident in the outcome. The Judge took the matter under advisement and requested that the oral argument of the legal counsels be transcribed so that he could review the oral argument along with the various cases given to him by the Town Attorney and those that will be submitted by Cooper City in support of their respective positions. The oral argument presented by the Town Attorney as well as that of opposing counsel has since been transcribed pursuant to the Judge's Order and a copy of same has been provided to the Administrator and members of the Town Council for their information. A copy of the transcribed oral argument was provided by the Town Attorney's Office to the Court. On April 2, 2004, the Court ruled on the Town's Motion to dismiss the 6 count Complaint filed by the City of Cooper City against the Town to invalidate Town of Davie Ordinance 2002-37 and Resolution R-2002-259. Cooper City had filed its Complaint against the Town requesting declaratory judgment and supplemental relief, petitions for a Writ of Quo Warranto and Certiorari. Upon review of the oral arguments brought by the Town Attorney's Office in opposition to those petitions for relief, the Court dismissed 5 of the 6 counts filed by Cooper City in its Complaint against the Town. The Town Attorney had successfully argued that each of the Plaintiff's counts for injunctive and declaratory relief were invalid as well as the Plaintiff's Petition for Certiorari and the sole remaining count allowed by the Court was for a Writ of Quo Warranto. The Town Attorney's Office will endeavor to have the final available count dismissed and will continue to keep the Town Council apprised of the status of this case. On April 14, 2004, the Town Attorney's Office filed its Answer to the remaining count with the Court. City of Cooper City has since filed its response to the Town's Answer to the remaining Count. The Town Attorney's Office is now beginning the discovery process and will be serving a series of Interrogatories, Request to Produce and will be setting down depositions in the near future.

9. **DMG Roadworks, LLC v. Town of Davie.** The property owner has filed a Petition for Writ of Certiorari regarding the Town of Davie's re-zoning of the parcel of land owned by DMG Roadworks from the Broward County M4 Zoning District to a Town of Davie Zoning Category. This matter has been referred to special outside legal counsel, Michael Burke, has filed an Answer on behalf of the Town in response to the property owner's Petition. Oral argument was held in this matter on August 12, 2003. Judge Carney entered an Order granting DMG's Petition for Writ of Certiorari and quashing the Town Council's re-zoning of the Spur Road property to Davie M3. The Court's Order was previously forwarded to the Town Council and at its meeting of September 3, 2003, the Council gave Mr. Burke authority to seek further judicial review of the Trial Court's Order. This authority has been transmitted to Mr. Burke and his office is proceeding accordingly and taking the appropriate legal action. As previously indicated in prior Litigation Reports, the Town Attorney has spoken with Mr. Burke who advised the Town Attorney that his office had filed a Petition for Writ of Certiorari with the 4th District Court of Appeal on October 29, 2003, in an effort to quash the Trial Court's decision. On May 26, 2004, the Town Attorney spoke with Mr. Burke's legal assistant

who advised that his office continues to await a determination from the 4th District Court of Appeal as to whether it will issue an Order to Show Cause requiring a response from the property owner.

10. **MIGUEL LEAL V. OFFICER WILLIAM BAMFORD, ET AL:** The Plaintiff is suing 14 named police officers from various municipalities, including Lt. William H. Bamford, and K-9 Officer Banjire. It is his contention that in the course of his arrest, the officers used unnecessary force and therefore, violated his rights under 42 U.S.C. Section 1983. He is seeking compensatory damages of $20,000,000.00 and punitive damages of $20,000,000.00. As previously reported to the Town Council, the Town has filed an appropriate response to the Plaintiff's Complaint and the Plaintiff has been deposed and the Town is moving forward. On October 29, 2003, our special legal counsel, Mr. McDuff, filed a Motion for Summary Judgment in this matter with regard to several of the Defendants named in the lawsuit. The Town Attorney spoke with Mr. McDuff on May 26, 2004, and was advised that the Motion for Summary Judgment remains pending and the Court has not yet ruled upon same. Mr. McDuff has indicated in the past that he continues to remain confident that there is a good possibility that the Court may grant the Town's Motion for Summary Judgment in this case either in whole or in part. As of May 26, 2004, no trial date has yet been set for this case.

11. **TOWN OF DAVIE V. UHEL POLLY HAULING, INC.:** The Town Attorney's Office initiated a lawsuit against this Defendant seeking injunctive relief and contending that the Defendant was tortiously interfering with the Town's exclusive franchise with Waste Management with regard to the disposal of solid waste. The Defendant filed a Motion to Dismiss and Oral Argument was originally scheduled for September 10, 2003. Before that date however, the Town Attorney's Office received word from the attorney for the Defendant that its client was willing to enter into a Settlement Agreement with regard to this litigation instituted by the Town Attorney's Office, as well as settle several accompanying Code Enforcement actions. The Town Attorney accordingly, prepared a proposed Stipulated Agreement between the Town of Davie and Uhel Polly Hauling, Inc., which it forwarded to the Code Enforcement Officer for his review. After Mr. Stallone reviewed the document and found it satisfactory, the Stipulation was transmitted to the Defendant's attorney for review. In light of this fact, the hearing on Defendant's Motion to Dismiss was canceled by the Defendant. For a considerable period of time, the Town Attorney's Office continued to await receipt of the executed Stipulation from the attorney for the Defendant. The delay of receipt of the executed Stipulation was brought to the attention of Mr. Stallone, our Code Enforcement Director, and with his concurrence, the Town Attorney's Office wrote to the Defendant's legal counsel demanding an immediate response. Thereafter, a response was received in which the Defendant requested certain revisions to the proposed Stipulation of settlement. The proposed revisions were thereafter reviewed by this office, and the Town Code Compliance Division and the agreement thereafter, revised and transmitted to the attorney for Uhel Polly Hauling for his further review. On March 31, 2004, the original of the revised Stipulation of settlement was received from the Defendant fully executed by the Defendant. The original of the executed Stipulated Compliance and Agreement to Mitigate Code Compliance Case Number 02-1026 has been forwarded to the Code Enforcement Officer, Daniel Stallone, with a request that it be placed on a forthcoming meeting of the Davie

Town Council for its deliberation. If the Stipulation, including the mitigated amount, is approved by the Davie Town Council, and once the Defendant pays same consistent with the agreement, then the Town Attorney's Office will file a Voluntary Dismissal Without Prejudice of the lawsuit pending in the Circuit Court under Case Number 03-05063 CACE (11). On May 26, 2004, the Town Attorney spoke with Mr. Stallone who indicated that he would attempt to get this matter before the Town Council at its second meeting in June.

12. **SESSA, ET AL V. TOWN OF DAVIE:** As indicated in previous reports, the Town Attorney's Office successfully recovered various sums from a number of property owners relevant to the special road assessment as a result of filing several lawsuits to enforce the road assessment liens recorded against their properties. The various settlement proposals have been outlined in previous Town Attorney's Litigation Update Reports, and have each been brought before the Town Council for its consideration and ultimate approval. As each property owner has transmitted the funds to the Town, the Town Attorney's Office has filed appropriate pleadings releasing the Lis Pendens and dismissing the cases filed against these Defendants. The Town Attorney's Office continues in its efforts to recover the money owed the Town from the special road assessments.

13. **OLD BRIDGE RUN HOMEOWNERS ASSOCIATION, ET AL V. TOWN OF DAVIE AND OLD BRIDGE RUN HOMEOWNERS ASSOCIATION, ET AL V. TOWN OF DAVIE AND SHERIDAN HOUSE:** The Town was served with two separate lawsuits initiated by the OLD Bridge Run Homeowners Association and others. The Town filed its Answer in the action for Declaratory Relief as well as its response to the Amended Petition for Writ of Certiorari. The other Defendant, Sheridan House, also filed its responses to both lawsuits and copies of several pleadings have been previously provided to the members of the Town Council for their review. Oral argument was heard regarding the Petition for Writ of Certiorari and on January 13, 2004, Judge Carney denied the Petition for Writ of Certiorari filed by OLD Bridge Run Homeowners Association and others in the first lawsuit. The second lawsuit, an action for Declaratory Relief, continues to be pending. Discovery procedures have been undertaken and several of the individual plaintiffs as well as several members of the Town Staff have been deposed by the attorneys for the respective parties. On February 19, 2004, both sides attended a Court ordered mediation session, but the mediation ended with the parties reaching an impasse. Thereafter, the Plaintiff moved for a continuance in the action for Declaratory Relief and a continuance was granted. Subsequent thereto, the Plaintiff moved for permission to file a Second Amended Complaint and that request was granted by the Court. The case was then set for trial during the one week trial period commencing May 17, 2004, but the Plaintiffs again sought a continuance and a continuance was granted to June 1, 2004. In the meantime, Sheridan House has moved for Summary Judgment and Mr. Burke has advised that the Court had taken the Motion for Summary Judgment under advisement. Mr. Burke advised the Town Attorney on May 12, 2004, that the Court had not ruled on the Motion for Summary Judgment and the matter was still set for trial before the Honorable O. Edgar Williams, Jr. On May 24, 2004, the Plaintiffs filed their Amended Second Emergency Motion for Continuance of the trial and at a hearing held on Wednesday, May 26, 2004, the Court denied the Motion. The trial is now set to begin on June 1, 2004, and Mr. Burke's office anticipates the trial will last approximately a week in

duration.

14. **TOWN OF DAVIE V. LAMAR ELECTRONICS, INC.:** The Town successfully prosecuted Lamar Electronics, Inc. for several violations of the Town Code before the Special Master. Lamar Electronics has filed an Appeal with the Circuit Court of Broward County. Lamar Electronics filed its Initial Brief and in response, the Town Attorney's Office on behalf of the Town, has filed an Answer Brief. Lamar Electronics in response, filed a Reply Brief. The Town filed a Motion to Strike the Reply Brief of the property owner and after hearing, the Court allowed the Reply Brief to stand, but however, with the caveat that Lamar Electronics will not be able to utilize their argument with regard to the Right to Farm Act. The Court now has before it the various Briefs filed by the parties and the Town Attorney's Office is awaiting the Court's ruling with regard to the Defendant's appeal.

15. **TOWN OF DAVIE V. FORMAN:** This litigation regarding a piece of property on State Road 84 is being handled by special legal counsel, Michael Burke. Administration and special legal counsel requested a Special Executive Session and the Council approved same. The Special Executive Session was held on March 3, 2004 during which the Town Council considered a possible settlement of the parties' dispute and gave direction to special legal counsel. On May 12, 2004, the Town Attorney spoke with Mr. Burke who indicated that settlement negotiations had been ongoing and that in all probability, he will be presenting a proposed Settlement Agreement to the Town Council in June. Mr. Burke called the Town Attorney on May 27, 2004 and indicated he was attempting to get this matter placed on the Town Council Agenda for the first meeting in June.

17. **FRANCIS McDONOUGH V. TOWN OF DAVIE:** Plaintiff, Francis McDonough, has filed a Complaint/Petition for Writ of Certiorari in which he is allegedly appealing the conditions imposed by the Town Council of the Town of Davie on Plaintiff's Application for a Plat Plan Approval. The Town Attorney's Office filed a Motion to Dismiss, and the Motion has been set to be heard by the Court in July.

18. **PARK CITY MANAGEMENT CORP. AND PARK CITY ESTATES HOMEOWNERS ASSOCIATION V. TOWN OF DAVIE:** The Town has been served with a Complaint for Declaratory Relief relevant to the issue of the maintenance of the 18th Street median strip within the Park City Mobile Home Park. The Town Attorney's Office has prepared a Motion to Dismiss and at the hearing, the Court held that the Complaint was brought in a procedurally correct manner and the Court will be hearing the merits of the case. In the meantime, members of the Homeowners Association have expressed their desire to withdraw as a party plaintiff in this litigation. The Plaintiff's attorney in turn, filed a Motion to Amend its Complaint to drop the Homeowners Association as a Plaintiff and to name it along with the Town of Davie as a Defendant. The Judge allowed the Plaintiff to file its Amended Complaint which names Park City Homeowners' Association as a defendant in the lawsuit. It should be noted that the jurisdictional limitations on Count II for Specific Performance of an alleged oral contract allegedly entered into between the Town of Davie and Park City Management is capped for jurisdictional purposes of the total amount of $15,000.00 since the County Court does not have jurisdiction beyond that amount. Opposing counsel stipulated to that fact. The

Town Attorney's Office is now preparing an Answer to be filed in response to the Complaint and will be conducting discovery.

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